

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4204 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 and 2 Yes. Nos. 3 to 5 No.

GANGABEN DAUGHTER OF

HARGOVINDBHAI VALLABHBHAI

Versus

COLLECTOR

Appearance:

MR RN SHAH FOR MR MUKESH R SHAH for Petitioners
MR.MUKESH PATEL, AGP for Respondent Nos.1 and 2.
MR UTPAL M PANCHAL for Respondent Nos. 3 to 6

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 01/10/97

ORAL JUDGEMENT

Heard learned counsel.

The consent decree was passed in Special Civil Suit No. 422 of 1978 on 30.12.1988 by the Civil Judge (S.D) Surat with regard to piece of land situated at Fulpada, taluka Choryasi, district Surat i.e. revenue survey no. 27/1/2 admeasuring two acres and one guntha i.e. 8196.64 sq.mts. of land. The town planning scheme

no.15 (Fulpada) was implemented under Town Planning Scheme in place of original plot no.59 i.e. revenue survey no.27/1 final plot no. 57 was given. There was yet another piece of land at Fulpada being revenue survey no.86 paiki admeasuring 1.23 acres and survey no. 26/2 and 26/3 to which town planning scheme was also applicable. The disputed land being survey no. 27/1 and 86 paiki originally belonged to one Vallabhbhai Hasjibhai. These lands were mutated in the record of the rights in the names of Hargovindbhai Vallabhbhai and Thakarbhai Vallabhbhai by successor. There was a partition between Hargovindbhai and Thakarbhai Vallabhbhai with regard to the ancestral property and thus land bearing survey no.27/1 and 86 paiki had gone in the share of Hargovindbhai. The aforesaid lands were in the name of Hargovindbhai Vallabhdas as ancestral and HUF property. The suit was filed by Hargovindbhai Vallabhbhai in the Court of Civil Judge (S.D), Surat for partition for the disputed land and in the Special Civil Suit No. 422/78 on the basis of compromise the consent decree was passed. As per this decree passed on the consent terms the land being survey no. 27/1 and survey no. 86 paiki was divided into nine plots by partition and a copy of the decree on the consent terms as above has been placed on record as exhibit 8. The petitioner no.1 herein is daughter of deceased Hargovindas Vallabhdas and petitioner no.2 is daughter of Kamuben who is other daughter of deceased Hargovindas Vallabhdas and petitioners no. 3 and 4 are the sons of Gangaben. Petitioner no.5 is son of Jekoben who was sister of deceased Hargovindas Vallabhdas. On the basis of the consent decree as aforesaid, the entries were made in the revenue record i.e. in the record of city survey and the names were mutated in terms of the partition decree dated 30.12.1978 as above. On the basis of the aforesaid partition, names of the respective parties were entered in the village form no.6 vide entry no.1344 by Talati cum Mantri and this entry was also certified by the Deputy Mamlatdar vide his order dated 23.4.1980.

The Dy.Collector, Choryasi Prant in suo motu case no. RTS/Revision 2/83 passed an order on 12.8.1983 whereby the entries as aforesaid were set aside. Against this order dated 12.8.1983 which is enclosed with the petition as Annexure 'C' i.e. the order passed in Case No. RTS/2/83 whereby entry no. 1344 dated 23.4.1980 was cancelled by the Dy.Collector, Choryasi Prant, Surat, Hargovind Vallabhbhai and Ramanbhai Hargovindbhai preferred Revision Application before the Special Secretary (Appeals) Revenue Department. This revision petition under rule 108(6) of the Gujarat Land Revenue

Rules, 1972 was sent to the Collector, Surat and it was directed to be treated as appeal under rule 108(5) for decision in accordance with law after hearing the parties. This order was passed by the Revenue Department, Government of Gujarat on 10.2.1988 and thereafter the Collector, Surat passed an order on 13.7.1988 rejecting the appeal and confirming the order dated 12.8.1983. The present petitioners preferred appeal against the above order dated 13.7.1988 passed by Collector, Surat, before the Special Secretary (Appeals) Revenue Department, Government of Gujarat and order dated 19.4.1997 has now been passed by the Special Secretary (Appeals), Revenue Department. It is this order dated 19.4.1997 which is impugned in the present Special Civil Application.

Learned counsel for the petitioner Mr.Shah has submitted that the Dy.Collector had no power to take up the action suo motu so as to cancel the entries which had been made earlier on 23.4.1980 on the basis of the consent decree which had been passed in Special Civil Suit and therefore the cancellation of this entry was wrong. Mr.Shah has also argued that before passing the order in the suo motu action by Dy.Collector no opportunity was afforded to the petitioner, no notice was given and the suo motu action was initiated after a period of more than three years for which there is no explanation and the order could not be passed against the petitioners by making reference to the requirement under any enactment other than the Bombay Land Revenue Code, 1879.

The respondents have sought to traverse the claim of the petitioners on the ground that full opportunity had been afforded, notice had been given and since the petitioners themselves were responsible for breach of the condition, they cannot raise any grievance with regard to the period intervening from 23.4.1980 to 12.8.1983 and that the impugned order dated 19.4.1997 passed by the Special Secretary (Appeals), Revenue Department in the revision application does not suffer from any infirmity. Mr.Shah has placed strong reliance on the scheme of the rules as contained in the Gujarat Land Revenue Rules, 1972 under Chapter 15 thereof relating to the record of rights from Rule 104 onwards to Rule 108. He has vehemently contended that the Dy.Collector had no power to initiate action suo motu and the order passed by the Dy.Collector cancelling the entry was without jurisdiction. He has placed reliance on 1968 (9) GLR Pg.717 [paras 26 & 27] in the case of Navinkant Vs. Prabhat Kabhai. From the provisions of the Gujarat Land

Revenue Rules, 1972, 104 onwards it is clearly discernible that with regard to the record of rights and the entries of the mutations a detailed procedure has been given as to how the entries shall be made and how, and before whom such entries will be the subject matter of appeal or revision. Under rule 108(6) the Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings. Thus, with reference to the scheme of Rules what has been laid down in the case of Navinkant Vs. Prabhat Kabhai (Supra) it is clearly made out that procedure with regard to appeal or revision in the case of entries and in the record of rights has been provided but these provisions under the rules relating to the procedure do not divest the Dy. Collector from taking upon action suo motu. No scheme of rules can over-ride the provision of the main Act whether the matter is considered by the Commissioner (now known as Special Secretary) under Rule 108(6) or the matter is taken up suo motu for revision under section 211 of the Bombay Land Revenue Code. No exception can be taken to the order passed by the Dy. Collector so as to take up suo motu action with regard to entries. Section 211 is general power of revision vests with the State Government and any revenue officer not inferior in rank to Assistant and/or Dy. Collector or Superintendent of Survey in the respective department may call for and examine the record of any inquiry or proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. In the case of Navinkant Vs. Prabhat Kabhai (Supra) it has not been laid down that revisional powers cannot be exercised by the Dy. Collector under section 211 of the Bombay Land Revenue Code. All that has been considered in Navinkant's case is the scheme of the rules relating to the record of rights and the scope of rules 104 to 108. Thus, this authority does not lend any support to the argument of Mr. Shah that the Dy. Collector could not take action suo motu under section 211 of the Bombay Land Revenue Code while passing the order dated 12.8.1983. Once it is found that Dy. Collector had powers to pass the order dated 12.8.1983 the question arises as to whether he was justified in exercising these powers suo motu after a period of more than three years because the order with regard to entry no. 1344 had been passed on 23.4.1980. Mr. Patel,

learned Assistant Government Pleader and Mr.Panchal have pointed out that this time of three years was taken because there was breach of the conditions by the petitioner himself. These conditions were required to be considered. The petitioners themselves did not place the copy of the decree on record and that such ground was never raised by the petitioners in the appeal and/or revision which was preferred by them earlier nor such objection was raised before the concerned Dy.Collector. The Dy.Collector while passing the order dated 12.8.93 has given reasons at the very threshold of the order as to why the suo motu action was initiated by him and with regard to the entry no.1344 dated 11.1.1979 which was later on confirmed on 23.4.1980. It has also been recorded that the matter came to be noticed when construction was raised on the land in question and also with regard to the breach of the condition under the Urban Land (Ceiling and Regulation) Act. No doubt it has been clearly laid down in AIR 1969 SC Page 1297, [State of Gujarat Vs. Patel Raghav Natha and others] that in such matters when no limitation is fixed for initiating action, the action has to be taken within reasonable time and this is the law laid down by the Apex Court but in the facts of the case at hand it cannot be said that the suo motu action was initiated under section 211 after unreasonable and long time. In the facts of the present case the order passed by the Dy.Collector cannot be held to be illegal on this ground. So far as the question of affording an opportunity and giving notice to the petitioner is concerned apart from the order dated 12.8.1983 itself the matter has been considered at various levels thereafter and the present petitioners had preferred the revision in which the present impugned order dated 19.4.1997 has been passed. So far as the order of 12.8.1983 was concerned, it was placed in the proceedings by way of suo motu action and it cannot be said that while passing this order dated 12.8.1983, the rights of the present petitioners were determined. As it is the case of the petitioners themselves that such entries are relevant only for the purpose of fiscal matters and the entries do not decide the title. Thus the argument that Dy.Collector did not hear the present petitioners is not the objection of any legal consequence. Besides this Mr.Panchal placed reliance on AIR 1977 Pg.121 [Controller of Estate Duty Vs. Venugopala Varma Rajha] in which AIR 1969 Pg.1297 has been considered and a view has been taken that the initiation of proceedings even after the lapse of 20 years from the date of the transfer does not render the proceedings to be invalid. Mr.Shah has also placed reliance on 1996 (SCC) Pg.433 [Sankalchan Jaychandbhai

Patel & Others Vs.Vithalbhai Jaychandbhai Patel]. In this case also the Supreme Court has held that mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and the right, title and interest as to the property should be established dehors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein. Mr.Shah has invited the attention of the Court to an unreported order dated 4.8.1997 passed in Special Civil Application No.4920 of 1997 in which the Court noticed that dispute between the parties is pending in the Civil Court and the revenue entry will be corrected in accordance with the decision to be rendered by the Civil Court. The petitioner in that case did not press petition and the petition was disposed of as withdrawn. I fail to understand how this unreported order dated 4.8.1997 is of any avail to the petitioner in this case merely because it is mentioned in this order dated 4.8.1996 that "it is needless to state that the mutation entries of impugned orders do not confer any title on any one". The mutation entries confer no title on any party is a proposition of law with which no one can have any quarrel nor it is a question which directly arise in the facts of the present case for the purpose of assailing the order dated 19.4.1997 which has been passed by the Special Secretary nor such a legal position can impinge upon the order which had been passed earlier by the Dy.Collector on 12.8.1983. Mr.Shah has made reference to Civil Suit No. 1229 of 1995 filed by the respondents no. 3 to 6 in this regard that the matter is pending. So far as the proceedings in this Civil Suit are concerned they have nothing to do with any of the controversies raised in this petition, if the present petitioners want to wait for the determination of their rights or title on the basis of that Civil Suit it is for the petitioners to decide the course of action which they want to choose on account of the pendency of the suit as they may feel advised. On the basis of the pendency of this suit nothing turns out in favour of the present petitioners so far as the controversy raised in the present petition is concerned. Mr.Shah has also placed reliance on 32(1) GLR Pg.113 [Evergreen Apartment Co.operative Housing Society Vs. Special Secretary, Revenue Department] and 38(1) GLR Pg.50 [Janardan D.Patel Vs. State of Gujarat]. So far as the principles decided in these two cases are concerned there cannot be any dispute but on the basis of these decisions none of the points raised by the petitioner in the present petition are supported and on that basis nothing can be held in favour of the present

petitioners.

Upshot of the aforesaid discussions is that the Court does not find any merit in this Special Civil Application and the same is hereby dismissed. Rule is hereby discharged. No order as to costs.

m.m.bhatt